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In the Supreme Court of the United States

OCTOBER TERM, 1952

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SUPREME COURT

PUBLIC SERVICE COMMISSION OF UTAH, HAL S. BENNETT, STEWART M. HANSON and W. R. McENTIRE,

Petitioners,

and

MELVA SEAMONS and ROY HILL, d.b.a. SEAMONS TRUCK LINE, and JOSEPH J. MILNE TRUCK LINE, INC., a corporation,

Petitioners,

vs.

WYCOFF COMPANY, INCORPORATED, a corporation,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit

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Petitioners, Public Service Commission of Utah, Hal S. Bennett, Stewart M. Hanson, W. R. McEntire, and Melva Seamons and Roy Hill, d/b/a Seamons Truck Line, and Joseph J. Milne Truck Line, Inc., a corporation, pray that a Writ of Certiorari issue to reverse the judgment of the United States Court of Appeals for the Tenth Circuit, and the judgment denying petition for rehearing therein, the judgment having been entered in the above

entitled case on December 19, 1951, the order denying petition for rehearing having been entered on March 19, 1952, and the order staying mandate having been entered March 31, 1952.

Opinions Below

The decree of the District Court is set forth in the record at page 22. The opinion of the Circuit Court of Appeals is set forth in the record at page 87, and the supplemental opinion at page 129. These opinions have not as yet been published in the Federal Reporter.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on December 19, 1951 and order denying petition for rehearing was entered on March 19, 1952, and an order was entered staying the mandate for thirty (30) days from March 31, 1952. The jurisdiction of this court is invoked under 28 U.S.C., Sec. 1254 (1).

Question Presented

Whether the transportation of motion picture films between points and places wholly within the State of Utah is in interstate commerce.

Statement

The QUESTION PRESENTED and the litigation to determine it grew out of a dispute between WYCOFF COMPANY, INCORPORATED of Salt Lake City, Utah, a motor common

carrier of motion picture film, on the one hand, and THE PUBLIC SERVICE COMMISSION OF THE STATE OF UTAH upon the other. Briefly stated, Wycoff Company, Incorporated, had been transporting film *intra*state within the State of Utah for several years under certificates of authority granted by the Utah Commission. Suddenly, after being refused certain added authority by the Utah Commission, the Company decided that all motor carrier transportation locally between motion picture theatres and exchanges wholly within Utah, was in *inter*state commerce and not subject to the jurisdiction of the Utah Commission, and commenced operations between points wholly within Utah despite the refusal of the Utah Commission to grant authority to do so. Thereupon the Utah Commission brought an injunction action in the State Court to enjoin the operations of Wycoff Company, Incorporated. Immediately, the Company instituted an injunction proceeding in the United States District Court to prevent the Utah Commission from interfering with its local hauling operations. The Company alleged its operations were in *inter*state commerce and not subject to the jurisdiction of the Utah Commission.

The specific facts related in the District Court below, underlying the QUESTION PRESENTED, are briefly as follows:

Motion picture film is sent by national film distributors from laboratories in New Jersey, New York (R. 46), or California (R. 49) to their Salt Lake City, Utah, branch exchanges for distribution to theatre exhibitors within Utah, as well as in other intermountain states. The chief concern herein is with film transportation wholly between points located in Utah.

Raw film stock is shipped from the laboratories in pasteboard cartons (R. 57), each of which contains a num

ber of 1,000 feet lengths (R. 28, 39, 64), the number being dependent upon the number of assembled prints desired by the Salt Lake exchange. After arrival of this raw film at the Salt Lake exchange, it is inspected, assembled into 2,000 foot rolls, additional strips of film known as heads and tails are placed on each of such rolls for projection convenience, and the film is then wound on metal reels (R. 28, 39, 40). The reels are then placed in metal containers and stored in vaults to await booking* and subsequent distribution to theatres (R. 40, 62). The purpose of this local processing is to minimize transportation costs from laboratory to Salt Lake exchange, and serve the business purposes of the distributors, and has no relation to Utah reshipment in a transportation sense. The film cartons received by the exchanges in Utah cannot be transported direct to theatre exhibitors in Utah or even within Salt Lake City, Utah, in the form in which they reach this state (R. 39). Furthermore, in many instances the films even after being processed as aforesaid cannot be shipped and transported locally to theatre-exhibitors in Salt Lake City or other places in Utah until after local trade screenings**, and the dates of showing of the pictures have been agreed upon under booking procedure (R. 51, 52, 54, 64).

The film exhibition is under a specie of licensing contract between the film-distributor and the theatre-exhibitor. These contracts are executed in Utah subject

*Booking is a term used by motion picture distributors and exhibitors as a name for the procedure followed by local film exchanges wherein dates for showing of pictures at the many theatres are registered as between the exchanges and local motion picture theatres (See paragraph fifth of Plaintiffs exhibit No. 1, R. 79).

**Trade screening is a term used to name an established practice whereunder films are shown to prospective theatre-exhibitor-buyers.

to the approval of the distributor's New York offices. At time of execution, the date on which a film will be shown at a particular theatre is neither inserted nor established (R. 40, 41, 60, 71). In some instances these contracts are executed while the film is outside Utah, and in many other instances after it is physically in Utah, and frequently after it has been in storage in such state for an appreciable period of time. After film arrival, processing and storage at the Salt Lake exchange, a trade screening for the benefit of local exhibitors is arranged. Subsequent to this, and for the first time, the exact date on which the film will be shown at any theatre is established (R. 64). It is not until this, or a later time, that the date is established on which a particular film will subsequently be transported to any given Utah theatre. It is believed that this local film transportation in Utah is, in essence, the same as that of any typical commodity distribution system utilizing regional offices.

The *transportation* contracts or arrangements with local carriers are entered into and paid for by the local Utah theatre-exhibitors. The selection and control of the local carrier by the local theatre-exhibitor in most instances is a right granted by the film distributors in the contract of exhibition (R. 79, 81). In most instances the film is transported from Salt Lake City, Utah, to other Utah points for exhibition, and then returned to the Salt Lake City exchange for inspection and either storage or further transportation. In some instances it is circuited in rotation from the initial theatre to other theatres within an area before such return to the exchange (R. 37, 61).

From the Salt Lake exchange, films are also shipped to points in other intermountain states. Also in some instances *news reels* alone are shipped directly from out-of-state laboratories to Utah theatres. The transportation

character of such shipments is not in issue, as it is clearly interstate in character. It is of interest, however, because it indicates a possibility that the judgment of the United States Court of Appeals is founded upon a confusion between the over-all interstate nature of the business of film distribution, and the *intra*state nature of the film transportation between Utah points. The distinction has been repeatedly recognized by the decisions of this court and other federal courts in cases whose facts, though not involving films, are in substance similar to the instant case. *Atlantic Coast Line R. Co. vs. Standard Oil Company,* 12 F. (2d) 541; *A.C.L.R.R. vs. Commission of Georgia,* 281 Fed. 321.

In addition, it is clear that the film comes to rest at the Salt Lake City distributing office for processing and/or storage for reasons which are solely to meet the business convenience of the distributors, and which have no necessary relation whatsoever to the film transportation from the exchange to Utah theatres or return. See *General Oil Company vs. Crain,* 209 U.S. 211; *B. & O. vs. Settle,* 260 U.S. 166.

It is, moreover, noted that at the time the raw film arrives in Utah, the cardboard cartons contain sufficient film to meet the demands of the entire area of distribution embracing several states, and therefore this film could not be destined as a single shipment to any single theatre-exhibitor in Utah as the final destination. This would indicate that the instant case falls clearly within the doctrine of *Atlantic Coast Line R. Co. vs. Standard Oil Company,* 275 U.S. 257. In that case Standard Oil maintained Florida storage facilities for oil products shipped to that state from other states and foreign countries. From Florida the company reshipped these products to local bulk sta-

tions in Florida which, in turn, shipped to consumers by tank wagons. In some instances service stations were supplied with gasoline directly from the main storage facilities. Most of the product was sold under contracts executed before oil arrived in Florida. Also at the time the oil first entered the state it could not be determined where any particular cargo, or part of such cargo, would go, or when it would be shipped. The Supreme Court held that the movement of oil from the main storage facilities to other points in Florida was transportation in intrastate commerce. The instant case of film transportation falls clearly within the doctrine announced in the Standard Oil case.

The film transportation wholly in Utah is not pursuant to the original transportation contract by which the films reached the Salt Lake City exchange, nor is it pursuant to any terms of the original exhibition contracts. The local transportation of film is undertaken pursuant to an entirely separate and distinct contract of transportation between local carrier and local theatre effected subsequent to film arrival, processing, and storage in Utah (R. 50, 61, 71). This is merely one additional factor indicating the break in transportation from the film laboratory in New York to the ultimate Utah theatre-exhibitor. This court has consistently held that when any commodity transported in interstate commerce has reached the destination of its journey and has been delivered by the carrier to the consignee, it ceases to be a matter of interstate commerce, and subsequent movements, especially those necessary for legitimate distribution from the point at which it has been delivered, to other points in the same state, are *intra*state transportation. *Coe vs. Erroll*, 116 U.S. 517; *C.N.O. & T.P.R.R. vs. I.C.C.*, 162 U.S. 184; *I.C.C. vs. B.Z. & C.R.R.*, 77 Fed. 942; *U.S. & I.C.C. vs. Chicago K. & S.P. Company*,

81 Fed. 783; *Boyd vs. U.S.*, 275 Fed. 16; *Brown vs. Houston*, 114 U.S. 622; *Pittsburgh Southern Coal Company vs. Bates*, 156 U.S. 577; *Chicago, Milwaukee & St. Paul R.R. vs. Iowa*, 233 U.S. 334.

The District Court held (R. 22) that the transportation movement of films within Utah is *intra*state in character and subject to the jurisdiction and control of the Public Service Commission of Utah. Nevertheless, in the opinion below and the supplemental opinion denying the motion for rehearing, the Circuit Court of Appeals has reversed the District Court and held that such film transportation is *inter*state in character.

Specification of Errors to be Urged

The Circuit Court of Appeals, Tenth Circuit, erred:

1. In holding that film transportation between points and places wholly within the State of Utah is interstate in character and therefore not subject to the jurisdiction of the Utah Public Service Commission, contrary to and in direct conflict with rules of law established by the United States Supreme Court and various circuit courts of appeal as hereinafter pointed out.

2. In reversing the order of the District Court.

Reasons for Granting the Writ

1. The decision in this case is of the utmost importance, not only because it directly affects the scope of regulatory jurisdiction of a sovereign state heretofore exercised without question for several decades, but also, because the decision will unsettle important and commonly accepted distribution-transportation practices and principles established and followed for many years by shippers,

forwarders, distributors and carriers throughout Colorado, Wyoming, New Mexico, Kansas and Oklahoma, as well as the balance of the United States. It will unquestionably divest several hundred certificated intrastate motor carriers, now operating within the six western states composing the Tenth Circuit, of a major portion of their traffic, and thereby divest them of vital annual operating revenues heretofore enjoyed by them and recognized as rightfully theirs. This loss of traffic and revenues obviously will render the intrastate operating rights of these carriers eventually worthless and bring out general bankruptcy among many of these carriers for the decision herein will not only be applicable to motion picture film, but also to commodities generally distributed by national manufacturing and producing industries locally within states. It is difficult to conceive of a single industry operating upon a national scale that does not intend that the commodities they ship to their various state distributors shall ultimately be transported to dealers or exhibitors at final destinations within each state. In most instances this type of distribution within a state has long been accepted as intrastate transportation, subject to state regulation.

Unquestionably the decision herein will have a highly detrimental and damaging effect upon the businesses and industries of many people far beyond the interests of the immediate parties involved. We feel that we are not only representing our clients' interests in urging this petition for rehearing, but that we are also representing important principles affecting many people. As Chief Justice Fred M. Vinson noted in his recent address before the American Bar Association, "You represent not only your clients, but tremendously important principles, upon which are based the plans, hopes and aspirations of a

great many people throughout the Country."

2. The decision of the Circuit Court of Appeals, Tenth Circuit, is contrary to and in irreconcilable conflict with, the rule of law that *intention alone cannot convert what is essentially intrastate transportation into interstate transportation*, established by the United States Supreme Court, and other Federal Courts in, among other cases: *Atlantic Coast Line R. Co. vs. Standard Oil Company*, 275 U.S. 257; *General Oil Company vs. Crain*, 209 U.S. 211; *Atlantic Coast Line R.R. vs. Standard Oil Company*, 12 F. (2d) 541, (Cert. Den. 273 U.S. 712); *Southern Pacific vs. Arizona*, 249 U.S. 472; *B. and O. vs. Settle*, 260 U.S. 166.

The Circuit Court of Appeals, Tenth Circuit, in holding that transportation of motion picture film between points and places wholly within the State of Utah is in interstate commerce, based its opinion upon *United States vs. Erie R. Co.*, 280 U.S. 98. As the judgment states (R. 89): "If there is a continuing intent that goods shall be transported until they reach a designated place, the entire transportation is a continuing one notwithstanding that there may be a temporary stoppage enroute for a particular purpose."

The rule in the Erie case supra, grew out of a situation where an importer-broker, making all transportation arrangements covering a shipment of wood pulp from a foreign port to Hoboken, New Jersey, and thence to Garfield, New Jersey, by rail, rebilled the shipment at Hoboken as an *intra*state shipment to avoid the higher *inter*state freight rate. The shipment of wood pulp was in continuous movement under a common arrangement from the foreign port direct to Garfield, New Jersey, via Hoboken, with a stop only long enough to rebill, and

with no distribution involved, nor any splitting of the shipment or package into smaller lots. There was no question but that the entire shipment would go from one consignor to one named consignee, nor was there any storage to await determination of destination, as is the case with film. There was no storage to await negotiations with ultimate consignees, as there was in the instant case, nor was there any necessary processing to enable use of the product by ultimate consignees.

In film handling, despite the fact that all of the particular purposes mentioned in the foregoing paragraph made stoppage of film necessary at local Utah exchanges established for distribution of motion pictures, the Circuit Court of Appeals in net effect held that the *intention alone* that the films would eventually be sent on to local Utah theatres was sufficient to establish the character of the local transportation between the Utah exchange and theatres wholly in Utah as being interstate. It is most obvious that such a decision is irreconcilably in conflict with the long established rule that intention alone, (continuing or otherwise) cannot convert what is essentially intrastate commerce into interstate commerce. Thus in *B. & O. vs. Settle*, 260 U.S. 166, at page 173:

> "The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not deemed part of it, *even though some further shipment was contemplated when the original movement began.* Shipments to and from distributing points often present this situation."

And in *Atlantic Coast Line R. Co. vs. Standard Oil Company*, 12. F. (2d) 541 (Fourth Circuit), (Cert. Den. 273 U.S. 712) at page 547:

"The argument that complainant had in contemplation the shipments to its substations at the time of transportation to Wilmington, and that therefore, the shipments from Wilmington constituted one movement with the interstate shipment to that point, has an element of plausibility, but it is answered by the distinction drawn by Justice Brandeis in the *Settle Case*, to which we have just adverted. And that intention to make further shipment cannot convert what is essentially an intrastate shipment into interstate commerce has been expressly adjudicated by the Supreme Court in another case. Southern Pacific Co. vs. Arizona, 249 U.S. 472, 39 S. Ct. 313, 63 L.Ed 713."

Attention is especially invited to Southern Pacific vs. Arizona, supra, which is practically on-all-fours with the instant case. A brief comparison of facts generally should, therefore, be in order. In the instant case, film is shipped from outstate points for ultimate showing in Utah. In the Southern Pacific case, a show or carnival left El Paso, Texas, eventually intending to reach Bakersfield, California, and to show at many places in Arizona. The local movement of film in the instant case is all on local independent billing. The movement of the show in Arizona was also on local independent billing. In the instant case the film is intended to be transported to theatres in Utah, and then eventually go back to out-of-state points for ultimate destruction and salvage. In the Southern Pacific case it was admitted that the show started in El Paso, Texas, and eventually intended to move to other points in Arizona, and then proceed to California. Southern Pacific contended that movements by rail between points wholly in Arizona were in interstate commerce, because the show intended a continuous tour from El Paso, Texas to California, and

that transportation rates were not subject to jurisdiction of Arizona Corporation Commission, the utility regulatory body of that state. The Circuit Court of Appeals in the instant case held that all transportation of film locally between points and places wholly within Utah is interstate in character because there is a continuing intent that the films be transported until they reach their eventual journey's end.

The Supreme Court, however, in Southern Pacific Co. vs. Arizona, supra, held that mere intention of the shipper to ultimately continue the tour of the show beyond the State of Arizona did not convert an intrastate movement into an interstate movement, and that therefore the local transportation of the show between local points in Arizona was subject to the jurisdiction of the Arizona Corporation Commission.

2. The decision of the Circuit Court of Appeals herein directly conflicts with the rule of law established by this Court relative to distribution as announced in *Liggett vs. Lee*, 288 U.S. 517; *American Steel & Wire Co. vs. Speed*, 192 U.S. 500; *Public Utilities Com. vs. Landon*, 249 U.S. 236; *General Oil Company vs. Crain*, 209 U.S. 211, which cases establish that goods, merchandise or commodities are not in continuous movement, or a part of a continuous movement, if they have reached any destination where they are *held for the business purposes and the profit of the company* such as distribution or storage rather than merely in delay as an accommodation to the means of transportation, or in a warehouse used as an instrumentality of transportation.

The Salt Lake City film exchanges are used by national film distributors as places of storage of films while await-

ing booking dates at the various theatres, as well as trade screenings and further disposition. The exchanges are also used as shops wherein raw films are inspected and repaired, supplied with heads and tails to facilitate their use in projection machines, and wound upon heavy metal reels to permit their use in theatre projection machines. The exchanges are also offices in which negotiations are made with local theatres respecting contracts and the showing of films, including establishment of showing dates and trade screenings.

It is almost inconceivable that the Circuit Court of Appeals should virtually determine that these exchanges were mere instrumentalities of transportation such as a warehouse in *Beggs vs. Kroeger Co.* (C.C.A. 8), 167 F. (2d) 700, wherein goods enroute to chain stores of Kroeger Company were unloaded in a warehouse beside the railroad track, where the goods remained only long enough for trucks to pick them up and haul them to the chain stores. There is, therefore, an irreconcilable conflict between the decision of the Circuit Court of Appeals, Eighth Circuit, and the instant decision of the Tenth Circuit. If the instant decision is allowed to stand, it will bring about confusion and irreparable damage.

3. The decision of the Circuit Court of Appeals herein directly conflicts with a rule of law of the Circuit Court of Appeals, First Circuit, that *the fact that a contract is likely to give rise to interstate shipments does not actually make the movements interstate.* In *Lipson vs. Socony Vacuum Corporation*, 87 F. (2d) 265, it was contended that because oil came into Massachusetts from outside the state to authorized distributors under long term contracts, movements wholly within the state were in interstate commerce. The Circuit Court of Appeals, First Circuit, held that

local movements of the oil within the state of Massachusetts were intrastate in character, and the fact that the contract covering sale of these shipments of oil was made prior to transportation of oil into the state, which were destined eventually to other points in the state, did not constitute the local movements as interstate in character. In the instant case the opinion of the Circuit Court of Appeals states, (R. 90):

> "Under the contract, both it (distributor) and the (theatre) exhibitor contemplated and understood that the film should continue in transportation until it reached the exhibitor's theatre. The distributor had a continuing interest in the transportation of the film beyond the exchange. * * * it cannot be said that the film came to rest at the exchange, as the term is understood, in order to end interstate transportation."

The above quoted portion of the opinion is in direct conflict with the decision of the Circuit Court of Appeals, first Circuit, in *Lipson vs. Socony Vacuum Corporation, supra,* and will result in confusion as to applicable standards to be used in distinguishing intrastate and interstate transportation.

Conclusion

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Service of the within and receipt of a copy thereof is hereby admitted this ..... day of April, A.D., 1952.

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